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9 November 2009

Mr Gary Henry
Queensland Competition Authority
GPO Box 2257
BRISBANE QLD 4001

Dear Mr Henry

**QUEENSLAND COMPETITION AUTHORITY
INTERIM CONSULTATION NOTICE
BENCHMARK RETAIL COST INDEX 2010-2011**

The CCCL welcomes the invitation by the Queensland Competition Authority to provide comment on the recently released Queensland Competition Authority (Authority) Interim Consultation Notice on the Benchmark Retail Cost Index (BRCI) for electricity for 2010-2011.

The Credit Commercial and Consumer Law (CCCL) Program

The Credit Commercial and Consumer Law (CCCL) Program is a component of the Law and Justice Research Centre (LJRC) at the Faculty of Law at the Queensland University of Technology (QUT). The CCCL was established in March 2004 to be a source of expertise on consumer law issues with the objective of promoting the attainment of a fair, safe and efficient marketplace for consumers.

The CCCL aims to promote a high standard of public debate about the law and regulation of consumer protection generally, as well as to inform decision-makers in government, business and the broader community.

The CCCL's work on consumer issues in the national energy market is led by the Consumer Advocate, Electricity, one of the specialist projects within the CCCL. The Consumer Advocate represents the CCCL's work that seeks to build a deeper level of insight and knowledge about issues concerning residential, business, rural and remote small-end consumers of electricity.

Submission

The Authority proposes to adopt the same methodology in calculating the BRCI for 2010-2011 as that which was used in 2009-2010. This earlier methodology was made on the basis that it accorded with the decision of the Supreme Court of Queensland in *AGL Energy Ltd v Queensland Competition Authority & Anor: Origin Energy Retail Ltd v Queensland Competition*

Authority & Anor [2009] QSC 90. The Authority seeks comment on any aspects of its proposed approach for the purposes of calculating the BRCI for 2010-2011.

The CCCL is unable to undertake a detailed analysis of this approach within the limited period of time allowed for consultation. In the circumstances, the CCCL's comments in response to the Authority's invitation are limited to the following general observations only.

Consumer Impact Assessment

The CCCL is aware of views repeatedly argued by the Queensland Council of Social Service Inc (QCOS) that steps should be taken to introduce legislative and policy changes to allow for electricity regulatory and pricing arrangements in Queensland to include a consumer impact assessment.

Unlike other Australian jurisdictions, Queensland energy policy does not recognise the need to ensure that small-end consumers of electricity (particularly vulnerable consumers) have access to a basic level of non-discretionary essential energy at an affordable price.

The existing legislative framework in Queensland also fails to provide any scope to allow the Authority to consider the social impact of pricing arrangements and determinations on small-end consumers of electricity.

The CCCL agrees with the QCOS's view that this is a major limitation of the current BRCI arrangements and of Queensland's energy policy more generally. The CCCL has consistently highlighted its concerns about the absence of any process, regulatory or otherwise, to evaluate the impact of price increases on consumers of electricity in Queensland. As outlined in its earlier submission to the Authority on 22 May 2007, the CCCL observed that:

"The pressure to increase prices will only get greater in Australia. As the *Australian Financial Review* recently reported – major energy retailers are already writing to State regulators seeking ways of passing soaring wholesale electricity prices onto households and small businesses.¹...The Queensland Competition Authority needs to anticipate this pressure appropriately and the Queensland Government needs to find a place to evaluate and address price impacts, either through the regulator or another mechanism in order to address crucial social policy issues which are currently outside the provenance of the QCA".

More recent developments in the consumer experience, along with media and public debate about the escalating price of electricity, have only served to reinforce the continuing relevance of this concern. The CCCL strongly recommends that the Authority consider giving emphasis to this concern in its final report to the Queensland government.

Process Consultation Timetable

The CCCL notes that the Authority's proposed consultation timetable and process for the Final Decision on the 2010-2011 BRCI excludes stakeholder workshops. It is understood that

¹ Annabel Hepworth (21/05/07) 'Energy sellers want power over rates' *The Australian Financial Review*, p.10.

previous processes included workshops of this nature in addition to extensive consultation with all interested stakeholders. It is also understood that the Authority has long recognised the importance of these forums to address issues arising from information asymmetries, particularly for stakeholders representing small-end consumers of electricity.

The CCCL submits that stakeholder workshops provide a crucial mechanism through which all stakeholders can participate in the Authority's processes in an informed and constructive way. These forums enable stakeholders to work with the Authority and its consultants to build their capacity to contribute and facilitate a robust decision-making process that is appropriately informed by balanced and well-considered views.

The CCCL recommends the Authority reconsider the proposed consultation process for the Final Decision on the 2010-2011 BRCI and amend the process to include one or more stakeholder workshops.

Disclosure of data and assumptions

The Authority has not indicated whether it will be making full disclosure of all data and assumptions used to calculate the BRCI for 2010-2011. This information facilitates transparency and informed participation by all stakeholders in the Authority's decision-making processes.

The CCCL asks that the Authority clarify its intended approach on this aspect of its proposed consultation processes.

Electricity supply is an essential service. Changes in the price of this service will have real and significant implications for the consumer dimension of the market, particularly in relation to consumer vulnerability. It is appropriate that the implications of proposed changes in the price of electricity are fully understood and considered to ensure that decision-making processes and regulatory arrangements deliver appropriate outcomes for all stakeholders.

The CCCL will look forward to hearing more from the Authority on these matters.

For further questions in relation to this submission, please contact me on 07 31381230 or 0407 648 389, or email kathryn.mellick@qut.edu.au.

Yours sincerely,

Kathryn Mellick
Consumer Advocate, Electricity